

Introduced by Senator Denham

February 15, 2005

An act to ~~amend Section 120291~~ of *add Section 120290.5* to the Health and Safety Code, relating to HIV.

LEGISLATIVE COUNSEL'S DIGEST

SB 235, as amended, Denham. HIV exposure: penalties.

Existing law makes it a felony for a person to expose another to HIV by engaging in unprotected sexual activity when the infected person knows at the time of the unprotected sex that he or she is infected with HIV, has not disclosed his or her HIV-positive status, and acts with the specific intent to infect the other person with HIV. Existing law makes that felony punishable by imprisonment in the state prison for 3, 5, or 8 years and specifies that evidence that the person had knowledge of his or her HIV-positive status, without additional evidence, is not sufficient to prove specific intent.

~~This bill would revise the definition and penalty of that felony by deleting the requirement that the person act with specific intent to infect the other person with HIV. The bill would delete existing penalties for that crime and instead make the felony punishable by imprisonment in a county jail not to exceed one year or by imprisonment in a state prison.~~

This bill would make it a crime for any person to expose another to HIV by engaging in unprotected sexual activity when the infected person knows at the time of the unprotected sex that he or she is infected with HIV and has not disclosed his or her HIV-positive status to the other person prior to engaging in the unprotected sex. The new crime would be punishable with imprisonment in a county jail for a

period not to exceed one year or by imprisonment in a state prison for 2, 3, or 4 years.

By changing the definition of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 120290.5 is added to the Health and*
2 *Safety Code, to read:*

3 *120290.5. (a) Any person who exposes another to HIV by*
4 *engaging in unprotected sexual activity when the infected person*
5 *knows at the time of the unprotected sex that he or she is infected*
6 *with HIV and has not disclosed his or her HIV-positive status to*
7 *the other person prior to engaging in the unprotected sex is*
8 *guilty of an offense punishable by imprisonment in the county jail*
9 *for a period not to exceed one year, or by imprisonment in a state*
10 *prison for two, three, or four years.*

11 *(b) As used in this section, the following definitions shall*
12 *apply:*

13 *(1) "Sexual activity" means insertive vaginal or anal*
14 *intercourse on the part of an infected male, receptive consensual*
15 *vaginal intercourse on the part of an infected woman with a male*
16 *partner, or receptive consensual anal intercourse on the part of*
17 *an infected man or woman with a male partner.*

18 *(2) "Unprotected sexual activity" means sexual activity*
19 *without the use of a condom.*

20 *(c) (1) When alleging a violation of subdivision (a), the*
21 *prosecuting attorney or grand jury shall substitute a pseudonym*
22 *for the true name of the victim involved. The actual name and*
23 *other identifying characteristics of the victim shall be revealed to*
24 *the court only in camera, and the court shall seal that*

1 *information from further revelation, except to defense counsel as*
2 *part of discovery.*

3 *(2) All court decisions, orders, petitions, and other documents,*
4 *including motions and papers filed by the parties, shall be*
5 *worded so as to protect the name or other identifying*
6 *characteristics of the victim from public revelation.*

7 *(3) Unless the victim requests otherwise, a court in which a*
8 *violation of this section is filed shall, at the first opportunity,*
9 *issue an order that the parties, their counsel and other agents,*
10 *court staff, and all other persons subject to the jurisdiction of the*
11 *court shall make no public revelation of the name or any other*
12 *identifying characteristics of the victim.*

13 *(4) As used in this subdivision, “identifying characteristics”*
14 *includes, but is not limited to, name or any part thereof, address*
15 *or any part thereof, city or unincorporated area of residence,*
16 *age, marital status, relationship to defendant, and race or ethnic*
17 *background.*

18 ~~SECTION 1. Section 120291 of the Health and Safety Code~~
19 ~~is amended to read:~~

20 ~~120291. (a) Any person who exposes another to the human~~
21 ~~immunodeficiency virus (HIV) by engaging in unprotected~~
22 ~~sexual activity when the infected person knows at the time of the~~
23 ~~unprotected sex that he or she is infected with HIV, and has not~~
24 ~~disclosed his or her HIV-positive status to the other person prior~~
25 ~~to engaging in the unprotected sex is guilty of a felony~~
26 ~~punishable by imprisonment in the county jail not to exceed one~~
27 ~~year, or by imprisonment in a state prison.~~

28 ~~(b) As used in this section, the following definitions shall~~
29 ~~apply:~~

30 ~~(1) “Sexual activity” means insertive vaginal or anal~~
31 ~~intercourse on the part of an infected male, receptive consensual~~
32 ~~vaginal intercourse on the part of an infected woman with a male~~
33 ~~partner, or receptive consensual anal intercourse on the part of an~~
34 ~~infected man or woman with a male partner.~~

35 ~~(2) “Unprotected sexual activity” means sexual activity~~
36 ~~without the use of a condom.~~

37 ~~(c) (1) When alleging a violation of subdivision (a), the~~
38 ~~prosecuting attorney or grand jury shall substitute a pseudonym~~
39 ~~for the true name of the victim involved. The actual name and~~
40 ~~other identifying characteristics of the victim shall be revealed to~~

1 the court only in camera, and the court shall seal that information
2 from further revelation, except to defense counsel as part of
3 discovery.

4 (2) All court decisions, orders, petitions, and other documents,
5 including motions and papers filed by the parties, shall be
6 worded so as to protect the name or other identifying
7 characteristics of the victim from public revelation.

8 (3) Unless the victim requests otherwise, a court in which a
9 violation of this section is filed shall, at the first opportunity,
10 issue an order that the parties, their counsel and other agents,
11 court staff, and all other persons subject to the jurisdiction of the
12 court shall make no public revelation of the name or any other
13 identifying characteristics of the victim.

14 (4) As used in this subdivision, “identifying characteristics”
15 includes, but is not limited to, name or any part thereof, address
16 or any part thereof, city or unincorporated area of residence, age,
17 marital status, relationship to defendant, and race or ethnic
18 background.

19 SEC. 2. No reimbursement is required by this act pursuant to
20 Section 6 of Article XIII B of the California Constitution because
21 the only costs that may be incurred by a local agency or school
22 district will be incurred because this act creates a new crime or
23 infraction, eliminates a crime or infraction, or changes the
24 penalty for a crime or infraction, within the meaning of Section
25 17556 of the Government Code, or changes the definition of a
26 crime within the meaning of Section 6 of Article XIII B of the
27 California Constitution.